**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**ORDINARY ORIGINAL CIVIL JURISDICTION**
**WRIT PETITION NO.1061 OF 1997**

1. Eastern Peripherals Limited a Company incorporated under the Companies Act, 1956, and having its registered office at 406, Dalamal Towers, Nariman Point, Mumbai-400 021.

2. Bhupendra V. Shah, of Bombay Inhabitant, having his office at Unit No.65, SDF III, SEEPZ, Andheri (East), Mumbai-400 096. .... Petitioners

- Versus -

The Brihanmumbai Mahanagar Palika, a Body Corporate constituted under the Bombay Municipal Corporation Act, 1888 and having its Head Office at Mahapalika Marg, Opp: C.S.T. Station, Mumbai-400 001. .... Respondents

Ms Anjali Chandurkar with Sri Jitu Motwani i/b M/s. P.D.S. Legal for the Petitioners.

Shri Vinod Mahadik for the Respondents.

**AND**

**WRIT PETITION NO.1303 OF 1997**

1. Ultra Tek Devices Limited a Company incorporated under the Companies Act, 1956 and having its registered office at Unit No.72, SDF III, SEEPZ, Andheri (East), Mumbai-400 096.

2. T. Vasu, of Bombay Inhabitant, having his office at Unit No.65, SDF III, SEEPZ, Andheri (East), Mumbai-400 096. .... Petitioners

- Versus -

The Brihanmumbai Mahanagar Palika, a Body Corporate constituted under the Bombay Municipal Corporation Act, 1888 and having its Head Office at Mahapalika Marg, Opp: C.S.T. Station, Mumbai-400 001. .... Respondents

Ms Anjali Chandurkar with Sri Jitu Motwani i/b M/s. P.D.S. Legal for the Petitioners.

Shri Vinod Mahadik for the Respondents.

**CORAM:** R.M.S. KHANDEPARKAR & V.M. KANADE, JJ.

**DATED:** OCTOBER 28, 2005

**JUDGMENT (Per R.M.S.Khandeparkar, J.):**

1. Since common questions of law and facts arise in both these petitions, they were heard together and are being disposed of by this common judgment. In both these petitions the petitioners seek to challenge the communication dated 9-4-1997 and 24-6-1997 demanding octroi duty from the petitioners.

2. The petitioners are engaged in the manufacture and export of computer systems. Under the relevant export and import policy r/w the Exemption Notification issued by the Government of India in exercise of powers conferred upon it under Section 25 of the Customs Act, 1962 being entitled to import into India the components and parts of the computer systems without payment of customs and additional duty, imported and cleared

diverse consignments of components and parts of the computer systems without payment of customs duty, leviable thereon under the First Schedule to the Customs Tariff Act, 1985 and additional duty leviable under Section 3 of the Customs Tariff Act.

3. It is the case of the petitioners that in terms of the relevant import and export policy, the petitioners were entitled to clear 25% of its production into domestic area on payment of excise duty calculated at the rate of 50% of each of the duties of customs payable on the like goods manufactured outside India and the petitioners accordingly during the period April, 1992 to November, 1994 cleared the computer systems manufactured in the export processing zone in the domestic tariff area of the value of Rs.12,40,57,375/-. However, the duty of excise paid on the manufactured computer systems was not in lieu of either the customs duty or the additional duty payable on the components and parts of the computer imported by the petitioners and cleared without payment of duty, but it was merely measured on the basis of the customs duty payable on the computer systems manufactured outside India. On the other hand, it is the case of the respondents that the customs duty was not levied at the time of import on the condition by the customs that those goods would be exported to foreign countries after conversion and as the petitioners sold that material after conversion on

payment of the excise duty, they are required to pay the difference between the octroi duty paid and actually payable on account of such excise duty collected in lieu of the customs duty on the said material.

4. Ms Anjali Chandurkar, learned Advocate appearing for the petitioners, submitted that in terms of Rule 2(7)a) of the Bombay Municipal Corporation (Levy of Octroi) Rules, 1965, hereinafter called as "the said Rules", the value of the articles is to be ascertained from the original invoice plus the shipping dues, insurance, customs duties, excise duties, countervailing duties, sales tax, transport fees, freight charges, carrier charges and all other incidental charges excepting the octroi incurred by the importer till the article is removed from the place of import for the purpose of levy of octroi. Thus, the value arrived in this manner is to be taken for the purpose of determining the octroi, inter alia, by addition of duties on the invoice value which are leviable till the article is removed from the place of import. The taxing event for the recovery of octroi is the place of import. At that point no customs duty or additional duty which was neither leviable nor levied could be loaded on the value of the components and the part of the computer systems by virtue of the Exemption Notification No.133/94 dated 22-6-1994. Drawing attention to the fact that the customs authorities had permitted the petitioners to clear the

said components and parts of the computer systems, without payment of customs duty in terms of the Exemption Notification, the learned Advocate submitted that there was no question of loading any excise duty on the value of the said components as the computer parts were imported and not manufactured in India and the excise duty is leviable only on the goods manufactured in India. Therefore, the respondents could not have demanded the octroi on the basis of the excise duty levied on manufacture of computer systems merely because the imported components were utilised for manufacture of such computer systems. She further submitted that admittedly at the time of import, the goods were subject to exemption from payment of customs duty and additional duty. The payment of any duty or tax on the components subsequent to their import and crossing of octroi barriers, cannot be included in the value of the octroi for the purpose of demand of octroi subsequent to the entry of the article in the city limits. On plain reading of the Exemption Notification, the benefit of the Notification for exemption from the customs duties was available at the time of taxing event for octroi. Admittedly, no customs duty was sought to be levied on the value of the component. Being so, bearing in mind the decision of this Court in **Ceat Tyres of India Ltd. v. Municipal Corpn. of Greater Bombay,** reported in 1994 (73) E.L.T. 39 (Bom.), the respondents could not have demanded the octroi duty.

5. Shri Vinod Mahadik, the learned Advocate appearing for the respondent-Corporation, however, placing reliance in the decision of the Apex Court in **M/s. Shroff and Co. v. Municipal Corpn. of Greater Bombay and another,** reported in 1989 Supp. (1) SCC 347 and referring to the Exemption Notification 133/94 as well as the impugned letter dated 24-6-1997 submitted that the Rule 2(7)(a) of the said Rules clearly refers to countervailing duties as well as the tax liability incurred or liable to be incurred till the articles are removed from the place of import and therefore merely because the payment of duty is differed to the later point of time, though the demand is in accordance with the duty leviable at the import point and on the import date on the goods in question, no fault can be found with the demand made from the petitioners.

6. The short point for consideration which arises is whether the value of the goods in question under Rule 2(7)(a) of the said Rules for the purpose of levy of the octroi duty would include the duties or charges which were though leviable but not incurred at the time of entry of the goods on account of conditional exemption granted but which were incurred or charged when the goods are dealt with after such entry in terms of the Exemption Notification and therefore the octroi duty would be leviable and recoverable as inclusive of such

charges in the value of the goods even though initially they were allowed to be cleared without such payment?

7. Undisputedly, the petitioners imported the component parts of the computer systems without payment of the customs duty or the additional duty in accordance with the export policy r/w the Exemption Notification No.227/79 read with Notification No.133/94 for the period from April, 1992 to November, 1994. It is also not in dispute that 25% of the production by the petitioners with the use of such materials can be utilised for domestic consumption, subject to payment of excise duty leviable on such articles in terms of the Central Excise and Salt Act, 1944 and in case where they are not excisable under the Excise Act, then on payment of customs duty for an amount equal to customs duty leviable on such articles as if imported as such. The Clause 3 of the Notification No.133/94 is very clear in that regard and it reads as under:-

> "3. Notwithstanding anything contained in this notification the exemption contained herein shall also apply to the said goods which on importation into India are used for the purposes of production, manufacture, processing or packaging of articles in a unit in the Zone and such articles (including

rejects, waste and scrap material arising in the course of production, manufacture, processing or packaging of such articles) even if not exported out of India, are allowed to be cleared outside the Zone under and in accordance with the Export-Import Policy and subject to such other limitations and conditions as may be specified in this behalf by the Development Commissioner of the Zone, on payment of duty of excise leviable thereon under section 3 of the Central Excises and Salt Act, 1944 (1 of 1944) or where such articles (including rejects, waste and scrap material) are not excisable, on payment of customs duty on the said goods used for the purpose of production, manufacture, processing or packaging of such articles in an amount equal to the customs duty leviable on such articles as if imported as such:

Provided that goods which have been repaired, reconditioned or reengineered shall not be allowed to be cleared outside the Zone."

8. Plain reading of the said Clause 3 of the said Notification would therefore disclose that the goods which are imported and used for the purpose of articles meant for domestic consumption are subject to either excise duty under the Central Excise Act or the customs duty in equal amount to the customs duty leviable on such articles as if they are imported. In other words, there is no blanket exemption from the payment of duty on such imported goods. On the contrary, the imported goods utilised for domestic consumption are not made to pay duty at the entry point, but the actual payment and collection of duty on such goods is differed for certain period and is made subject to happening of certain events in the nature of utilisation thereof in the manufacture of a product to be released for domestic consumption. Moment these goods are released for domestic consumption, they are subjected to the duty. It would obviously disclose that but for utilisation of these goods for domestic purpose, they would have been exempted from the payment of customs duty. It is also not in dispute that the octroi which is sought to be levied is on the basis of the duty leviable on such good on the date of entry of those goods for the purpose of import. The duty is not in accordance with the one which is prevailing subsequent to the importation of such goods. Only the payment and collection thereof is differed till such goods are released for domestic consumption.

9. The Apex Court in **M/s. Shroff and Co.'s** case (supra) was dealing with a matter where the party had filed petition challenging the inclusion of the countervailing duty in the assessable value for octroi on the ground that such duty was not incurred till the date of removal of the goods from the place of import. While dealing with the question as to whether the countervailing duty is includible in the octroi or not, the Apex Court, after considering the various provisions of the Bombay Municipal Corporation Act, 1888, the Central Excise Act, 1935 and the Octroi Rules, observed that the Rule 2(2) defines import to mean conveying of any article liable to octroi into Greater Bombay from any other area outside Greater Bombay. The place of import has been defined in Rule 2(4) to mean the Docks, Bunders, Wharfs, Railway Yards, Sidings, Depot, Air Port Terminus, Municipal Octroi Posts, at Roads across Greater Mumbai limits and such other places at which the articles arrive within Greater Mumbai for the purpose of import. Further, the Rule 2(7)(a) as it read before 28-7-1976 mentioned the charges incurred till the arrival of the articles at the place of import. The charges of countervailing duty incurred subsequent to the arrival of the goods at the place of import fell outside the rule as it then read. Between 28-7-1976 and 27-6-1983, the rule mentioned charges incurred till the articles were removed from the place of import. In as

much as the charge of countervailing duty was incurred after the goods had been removed from the place of import, the rule as it then read could not apply to such countervailing duty. The rule, however, as it reads subsequent to 28-6-1983 mentioned countervailing duty as well as the charges incurred or liable to be incurred till the articles are removed from the place of import.

10. Dealing with Rule 2(7), it was held by the Apex Court in M/s. Shroff and Co.'s case that the said Rule refers to "excise duties" as well as "all other incidental charges". The term "charges" includes taxes. While quoting its earlier decision in **D.G. Gose and Co. (Agents) Pvt. Ltd. v. State of Kerala and another,** reported in (1980) 2 SCC 410 to the effect that "the 'word' tax in its widest sense includes all money raised by taxation. It therefore includes taxes levied by the Central and the State Legislatures, and also those known as 'rates', or other charges, levied by local authorities under statutory powers", it was held that the expression "incidental" means necessary in certain contexts which does not mean a matter of casual nature only and that the countervailing duty was an incidence of imposition as such, and it was includible even prior to June 28, 1983 as an octroi.

11. Considering the said decision of the Apex Court, therefore, it is apparent that a duty which becomes

chargeable at the place of import, merely because the payment thereof is differed and is made subject to certain conditions including granting of exemption, it cannot be said that such duty merely because it is collected subsequent to the date of import, it would not form part of the value for the purpose of ascertaining the octroi payable on such product. Once the Rules provide that the value of the article is to be ascertained from the original invoice plus the various other duties including the countervailing duty as well as the other incidental charges, incurred or liable to be incurred till the articles are removed from the place of import, it would include the duty or tax chargeable but the payment thereof is differed. It is the chargeability of the duty which is to be ascertained for the purpose of the value of the article and not the date of the actual payment of the duty. The Rule 2(7)(a) nowhere provides that the value of the article would depend upon the date of the payment of the duty. It merely refers to the factum of the charge of duty that has been clearly laid down by the Apex Court in M/s. Shroff and Co.'s case. The Division Bench in **Ceat Tyres'** case (supra) had not considered this aspect at all but it had proceeded on the basis that at the time of entry into the octroi limits the company was not liable to pay the customs duty in view of the exemption granted by the Government. It is not the incidence of actual payment of duty alone which is relevant but the

incidence of chargeability of the duty in the sense that the charges those are liable to be incurred are also relevant to ascertain the value of the product for the purpose of levy of the octroi duty. The Rule 2(7) not only relates to the charges which are incurred but also to those which are liable to be incurred till the goods are released from the place of import. The law on this aspect being clearly laid down by the Apex Court in M/s. Shroff and Co.'s case, the decision in Ceat Tyres' case cannot be held to be laying down the correct law nor it can be said to be binding on this Court.

12. For the reasons stated above, therefore, there is no substance in the challenge to the demand of octroi. The petitions, therefore, fail and are hereby dismissed.

The rule is discharged with no order as to costs.

**(V.M. Kanade, J.)** **(R.M.S. Khandeparkar, J.)**